

## **SUNSHINE REFORM TASK FORCE MEETING MINUTES**

**Thursday, May 17, 2007  
6:00pm – 9:00pm**

**City Hall, W118-119**

Present: Ken Podgorsek, United Neighborhoods of SCC; Ed Rast, Strong Neighborhoods Initiative PAC; Virginia Holtz, Willow Glen Neighborhood Assoc.; Nanci Williams, San José/Silicon Valley Chamber of Commerce; Dan Pulcrano, Silicon Valley Leadership Group; Margie Matthews, Former Councilmember; Mary Ann Ruiz, Parks and Recreation Commission; Karl Hoffower, Citizens Commission on Human Rights; Dave Zenker, Falls Creek Neighborhood Association; Brenda Otey, At Large-Representative.

Absent: Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Susan Goldberg, San José Mercury News; Bobbie Fischler, League of Women Voters; Judy Nadler, Markkula Center for Applied Ethics; Bob Brownstein, South Bay Labor Council; Edward Davis, Orrick Law Firm (Legal Counsel).

Staff: Lee Price, City Clerk; Lisa Herrick, Senior Deputy City Attorney; Sheila Tucker, Office of the City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency; Tom Manheim, Office of the City Manager.

### **I. Approval of May 3, 2007 Meeting Minutes**

Upon a motion by Virginia Holtz, seconded by Dave Zenker, the May 3, 2007, minutes were approved with one abstention, Dan Pulcrano (absent 5/3/07).

### **II. Comments from the Chair**

Chair Rast announced that the Task Force will focus on the Phase I Report before it is brought to Council. Rast provided copies of minutes from previous meetings, so the Task Force can refer to the minutes while reviewing the Phase I Report.

### **III. Review of Meeting Material**

Staff provided an overview of the documents for the meeting.

### **IV. Definition of Public Subsidy**

Ken Podgorsek led the discussion of this item since Bob Brownstein was absent from the meeting. Mr. Podgorsek reported that the committee and staff did not come to a full consensus on the definition of public subsidy. Ken asked staff for any other recommendations to improve the definition.

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City Finance Director Scott Johnson made the following recommendations on the revised definition by Bob Brownstein:

1. Make clear who the financing authority belongs to, e.g. the City, Redevelopment Agency *and other related entities*.
2. Change “loans below the market rate” to “loans *below the City’s portfolio rate*” meaning, the rate the City earns on its investment portfolio.
3. Include a third option presented in the following item: “Buildings or access to buildings at prices below fair market value as determined by either the city’s purchase price, appraisal, *or replacement value*.”
4. Concerned about: “Capital improvements to a public facility operated by the private entity from which the private entity secures revenue”. Believes the item should say “private entity leasing City facilities” rather than “private entity secures revenue”.
5. Argued that the example Bob Brownstein provided for “goods and services” is more of a layperson’s definition and that the example should be revised.

The following comments were made by the Task Force on the definition of public subsidy:

1. Nanci Williams believes that there are very few things that would fall under the definition of public subsidy. For instance, loans are often mistaken for subsidies.
2. Chair Rast and Ken Podgorsek would like to see more disclosure on subsidies.
3. Virginia Holtz and Margie Matthews expressed concern about leasing properties for nonprofits.

*Public Comment: Sarah Muller, Associate Policy Director at Working Partnerships, wanted to clarify the Task Force’s discussion on capital improvements. Ms. Muller explained the intent of Bob Brownstein’s definition is to exclude nonprofits or any other entity that is not securing revenue through a large public subsidy. Recommended moving Bob Brownstein’s definition of public subsidy as it is written.*

*Public Comment: Dean Munro, Mayor’s Liaison to the Task Force, agreed with Ms. Muller to move Bob Brownstein’s definition forward.*

**Upon a motion by Ken Podgorsek, seconded by Virginia Holtz, the Task Force agreed the following definition of “public subsidy”: Bob Brownstein’s original definition, with the amendments made by staff, and excluding the provision “Capital improvements to a public facility operated by the private entity from which the private entity secures revenue” from the definition. Motion passed (6 approved, 4 opposed).**

**A motion was made by Ken Podgorsek to add the language, “Capital improvements to a public facility operated by the private entity from which the private entity**

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**secures revenue” to the definition of public subsidy. Motion failed (5 approved, 5 opposed).**

#### V. Discussion and Approval of the SRTF’s Draft Phase I Report and Recommendations

The Task Force made the following recommendations/comments to the Phase I Report:

##### Introduction/Table of Contents:

- Virginia Holtz mentioned that throughout the Phase I Report the phrases “the calendar year” and “the fiscal year” are both used, creating confusion. Virginia preferred “the fiscal year”. The Task Force agreed on this revision, and then later agreed to delete all references to “year”.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, said it would be simpler to establish an economic threshold rather than track by year.*

- Chair Rast wanted to include in the cover letter that there are some Phase I issues that will be decided in Phase II and that the Task Force recommends a pilot program. Staff explained that the concept of a pilot is explained under the *Implementation* section on page 7. Brenda Otey recommended that the “pilot program be mentioned twice in the document (once in the cover letter, once under the *Implementation* subsection).
- The Task Force agreed that the red-lined edits should be kept on page iv.

*Public Comment: Dean Munro, Mayor’s Liaison to the Task Force, asked the Task Force how it intended to review the document – by section or subsection?*

- Dave Zenker commented that the Task Force needs to define the concept of “pilot project” and referred to the document James Chadwick circulated before the meeting began. Dan Pulcrano agreed with Dave’s comment. Brenda Otey said there are some ideas which should be approached as a pilot project and some ideas should be brought to the ordinance. Lisa Herrick said the Phase 1 recommendations are in the form of a report to the Council and not in the form of an ordinance. Margie Matthews said it is up to the Mayor and Council to decide what – if anything, should be piloted.

*Public Comment: Dean Munro, Mayor’s Liaison to the Task Force, stated the Mayor and City Council will vote on an ordinance, not a pilot program.*

- Margie Matthews recommended deleting part of the last sentence under *Implementation* (p. 7), “on a pilot basis to allow a more complete review of effectiveness, impacts on resources, workload and City processes.

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#### Section 1

*Public Comment: Bert Robinson, from the San Jose Mercury News, identified a potential loophole under the Meeting subsection, 1.12B, page 10.*

- In section 1.7, Lisa Herrick noted that there are a few commissions established by Charter appointees. Staff will amend this section.
- Chair Rast mentioned that section 1.1 should include an agenda description. Lisa Herrick said there is already an agenda description in section 2.3.030.
- Tom Manheim noticed ancillary body should be included in section 1.12.
- Tom Manheim identified a problem with the language, “any other policy body” (used in section 1.14C). The Task Force agreed that the language needed to be revised.
- Virginia Holtz believed that section 1.13 should have included language that leases were excluded. Lisa Herrick explained that, technically, since all the properties at issue are leased, using the phrase “fully maintained” satisfied the intent of the Task Force on that section.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, wanted to add “standing committees” in section 1.14C. Mr. Chadwick expressed concern about the list of policy bodies in Attachment 1. If the definitions change, then the policy bodies listed would change.*

- Ken Podgorsek explained if the definitions change, then a policy body will then fall under the definition of ancillary body.
- Margie Matthews expressed concern over the list of policy bodies; why are the Sharks or the Tech included as policy bodies when entities such as the Rep or San Jose Stage Company are examples of non-governmental bodies? Lisa Herrick reviewed page 12, Section 1.14.E2 and explained its purpose – bodies exercising authority delegated to them by the City.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, stated the intent of Section 1.14E2. Mr. Chadwick explained that anyone who provides services has authority delegated by the City. This is more towards the exercise of delegated authority. He also commented there is more going on than simply providing services.*

*Public Comment: Terry Boyle, Tech Museum, said the Tech supports the ten goals of the Sunshine Reform Task Force. However, Mr. Boyle does not believe the Tech should be classified under the definition of “policy body” because the Tech does not exercise authority delegated to it by the City”.*

*Public Comment: Dean Munro, Mayor’s Liaison to the Task Force, encouraged the Task Force to go forward with Phase 1.*

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#### Section 2

- Dan Pulcrano proposed removing the language on section 2.3.010A2(c), page 17 – “\$1M or more per calendar year.” Nanci Williams suggested “in a year” rather than “per calendar year”. Tom Manheim stated the current City practice is “per calendar year”. Lisa Herrick said that she believed that Bob Brownstein’s intent – at least with respect to public subsidies – was to include the parameter of one year.
- Mary Ann Ruiz was concerned about the language “significant standing City policy is at issue” in section 2.3.030, page 20.
- Lee Price suggested putting subsections 2.3.010A2(c)-(e) under 2.3.010A2(b).

*Public Comment: Bert Robinson, San Jose Mercury News, wanted to discuss the idea of supplemental memos.*

- Dave Zenker stated that the Task Force’s earlier decision about supplemental memos should be left alone.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, recommended that section 2.3.010B be excluded from Policy Bodies. Mr. Chadwick explained since there is already a provision for emergency meetings, it is not necessary to leave in special meetings.*

- Lisa Herrick noted that emergency meetings were not discussed in the definition of ancillary bodies.

*Public Comment: Bert Robinson, San Jose Mercury News, expressed concern over the amount of time for public comment in section 2.7B.*

- Tom Manheim suggested rephrasing section 2.7B to read “double the amount of time” permitted for public comment.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, said the Mayor sometimes allows only 1 minute for public comment and proposed that the time be at least 3 minutes.*

- Ken Podgorsek proposed changing the language in 2.7B to read “a minimum of 2 minutes.” Margie Matthews said this revision would not work. Dave Zenker expressed frustration when public participation is minimized.

#### Section 3

- Chair Rast commented that section 3.6 did not include certain disclosures about real estate negotiations as agreed upon by the Task Force on February 24, 2007 (page 3 of

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minutes). Lisa Herrick responded that the report provides that certain terms about real estate negotiations must be disclosed in open session, before they are discussed in closed session. Understanding that the Task Force intended for disclosure before and after closed session, legal counsel will redraft section 3.6 to include certain disclosures about real estate negotiations.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, commented on discipline of Council appointees. Mr. Chadwick referred back to the November 24, 2007 minutes (page 7).*

- Chair Rast believed section 3.6A(4), page 32, should replace “public employee” to “Council appointee”. The Task Force agreed to keep the existing language.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, expressed concern over 3.3B-C. Mr. Chadwick noted that the listing of topics suggests that policy bodies and ancillary bodies would be broader; provisions are unnecessary.*

- Lisa Herrick disagrees that the listing of topics suggests that policy bodies are permitted to hold closed session under more circumstances than provided for in the Brown Act, but agrees with Mr. Chadwick that section 3.3 is unnecessary.

*Public Comment: Bert Robinson, San Jose Mercury News, believed that the parenthetical in section 3.3C2 should reflect the motion the Task Force made in the January 18, 2007 minutes. “Real property negotiations (A policy body may not address any subject other than instructions to its negotiator about the price and terms of payment).”*

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, recommended striking 3.3B, C1, C3-15 and adding language to say – “Except as otherwise provided in this chapter, closed sessions of policy bodies permitted by this section to conduct closed session may be held as permitted by the Brown Act or by other provisions of state law expressly permitting closed sessions by such bodies.”*

- Legal Counsel and Task Force agreed to remove the language Mr. Chadwick identified.

#### Section 4

- Chair Rast expressed concern with “After documents have been on file for 48 hours after being received, they may be removed, and, in the discretion of the Council, board or commission, placed in a monthly chronological public review file”; found in section 4.2B, page 33. Lisa Herrick responded that simply removing the clause “in the discretion of the Council, board or commission” did not address his concern. Instead, the Task Force agreed that the section should read “must be placed in a monthly chronological public review file.”

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- Dave Zenker mentioned that the annual study sessions on labor negotiations recommended by the Task Force was left out of the document. Lisa Herrick responded that she also had noticed the omission and would amend the report to include the annual study sessions on labor negotiations as section 4.6.

#### Attachment 1

- Staff noted that the following non-governmental bodies should be listed on the attachment:
  - Catholic Charities and any other operators of community centers
  - San José Repertory Theatre
  - San José Stage Company
  - AMPCO
  - Central Parking Systems
  - Dolce International
  - Logitech Ice
  - Palace Entertainment (operates Raging Waters)
  - Los Lagos Golf Course LLC (90% owned by CourseCo, Inc.)
  - San Jose Golf LLC (90% owned by CourseCo, Inc.)
  - Mike Rawitser Corp.
  - River Street Development Group
  - Greenwaste Recovery
  - Browning-Ferris Industries, Inc.
- Karl Hoffower commented that a company can agree or disagree whether or not they fall under a certain category and recommended the Task Force should move on from this section.

*Public Comment: Dean Munro, Mayor's Liaison to the Task Force, agreed with Karl Hoffower.*

- Lisa Herrick announced that four minority reports have been submitted to Sheila Tucker. The Task Force set up a deadline for further minority reports.

**Upon a motion by Dave Zenker, seconded by Margie Matthews, the Task Force agreed that minority reports could be submitted to Sheila Tucker until 12:00 p.m. on May 18, 2007. And, staff will incorporate the Task Force's decisions made at the 5/17/07 meeting into the final draft of the Report and Recommendations.**

**Upon a motion by Ken Podgorsek, seconded by Virginia Holtz, the Task Force agreed to move the Phase I Report (as amended) to the Rules and Open Government Committee and City Council.**

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- Dave Zenker inquired if it would be helpful to have the Task Force at the Rules and Open Government Committee.

*Public Comment: Dean Munro, Mayor's Liaison to the Task Force, said the intent of the Rules and Open Government Committee is not to make presentations on the report.*

- Lee Price noted that if a quorum of the Task Force intended to attend the Rules and Open Government Committee, then it would be appropriate to notice the Rules and Open Government Committee meeting as a joint meeting with the Sunshine Reform Task Force. Eight Task Force members expressed interest in attending the meeting.

*Public Comment: James Chadwick, Attorney for the San Jose Mercury News, stated that the Brown Act would permit a quorum of Task Force members to attend the Rules and Open Government Committee meeting solely as public attendees without noticing the meeting as a joint meeting.*

#### VI. Role of the Enforcement Committee

The Task Force agreed to defer this item to the June 7, 2007 meeting.

#### VII. Upcoming Agenda and Work Plan

On June 7, 2007, the Task Force will discuss the role of each committee; the committees should be prepared to discuss a general outline of the topics they will cover. The Task Force will also discuss some housekeeping items. In addition, the Task Force will discuss the California Public Records Act; Sheila Tucker suggested that staff make a presentation on public records.

#### VIII. Public Comment

No further public comment.

Upon a motion by Ken Podgorsek, seconded by Margie Matthews, the Task Force adjourned the May 17, 2007, meeting at 9:18 p.m.